

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Halstead Property Development LLC)
Dist. 1, Map 100N, Group B, Control Map 100N,) Cumberland County
Parcel 19.00, S.I. 000)
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$300,000 | \$2,700,000 | \$3,000,000 | \$1,200,000 |

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 12, 2007 in Knoxville, Tennessee. In attendance at the hearing were registered agent Michael John, Cumberland County Property Assessor's representative, Cliff Van Dorn, and J. R. Young, an appraiser with the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 1.5 acre site improved with the local main branch of Regions Bank situated at 392 N. Main Street in Crossville, Tennessee. Subject building contains 28,111 square feet of weighted area.

The appellant, Halstead Property Development LLC [“Halstead”], contended that subject property should be valued at \$1,000,000 in accordance with its November 29, 2005 purchase price of \$1,000,000. Mr. John testified that on June 15, 2005 Regions Bank sold subject property to First State Investors 4300, LLC [“First State”] for a recorded consideration of \$730,985. According to Mr. John, when a bank has too much equity First State will purchase the real property and lease it back to the bank. Mr. John stated that First State had actually purchased a portfolio which included subject bank and approximately 100 others. The \$730,985 recorded consideration resulted from an allocation. On November 29, 2005, First State sold subject property to Halstead for \$1,000,000.

Mr. John asserted that Halstead's purchase satisfies commonly accepted definitions of "market value." In support of this position, Mr. John introduced into evidence as part of collective exhibit #1 an exchange of letters he had with James E. Thompson, Esq., a principal in Halstead. Mr. John's letter quoted a typical definition of "market value" and

asked Mr. Halstead whether the November 29, 2005 sale satisfied that definition. In a letter dated April 4, 2007, Mr. Thompson succinctly responded as follows:

I believe Halstead Property did pay Fair Market Value for the property known as Regions Crossville Main and I do not have any considerations to make me believe otherwise.

Mr. John also contended that the income approach supports a significantly lower value. In support of this position, Mr. John introduced two income approaches into evidence (exhibits #3 and #4) which he maintained support a maximum value of \$1,790,000.

Although Mr. John did not introduce a cost approach into evidence, he essentially argued that the assessor's cost approach fails to account for all forms of accrued depreciation. Mr. John asserted that subject property constitutes an overimprovement and most banks no longer do operations locally. Mr. John maintained that Regions Bank only requires 4,000 – 7,000 square feet to operate what is effectively a branch bank.

The assessor contended that subject property should be valued at \$3,000,000. In support of this position, the cost approach was introduced into evidence. Mr. Young testified that he did not utilize the income or sales comparison approaches due to the lack of reliable data.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$3,000,000 based upon the presumption of correctness attaching to the decision of the Cumberland County Board of Equalization.

Since the taxpayer is appealing from the determination of the Cumberland County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that Mr. John's arguments concerning the sale of subject property and external obsolescence are virtually identical to those rejected by the administrative judge in *AmSouth Bank* (Maury Co., Tax Year 2006). That decision provided in relevant part as follows:

. . . Mr. John maintained that subject property suffers a significant loss in value due to external obsolescence. In particular, Mr. John asserted that local main branches are no longer needed because technological advancements have

allowed banking operations to be centralized. Mr. John argued that because local main branches now serve the same function as traditional branches, only 3,000 to 5,000 square feet is normally necessary. Thus, Mr. John contended that subject property has a significant amount of unnecessary space including the entire second and third floors.

* * *

The administrative judge finds Mr. John essentially asserted that all local main branch banks are obsolete because operations historically done locally are now performed centrally. The administrative judge finds that this assertion must be rejected absent additional proof for at least two reasons. First, nothing in the record indicates Mr. John qualifies as an expert with respect to the banking industry. Second, Mr. Daniels' introduced evidence to establish that local main branch banks of similar size are currently being constructed or have recently been constructed in Columbia. Thus, the administrative judge finds that what could possibly be true in other markets or for certain banks does not reflect the local market.

The administrative judge finds that Mr. John's sales cannot provide a basis of valuation absent additional proof. The administrative judge finds that no evidence was introduced concerning the marketing of the three properties. The administrative judge finds that the seller in each case was First State Investors 4300, LLC [First State"]. According to Mr. John, First State purchased these banks as part of a bulk purchase. The various banks it purchased were subsequently sold to third parties or leased back to the original sellers. Absent additional evidence, the administrative judge finds it reasonable to assume that the sale prices are certainly indicative of investment value. However, investment value and market value are not synonymous and the latter constitutes the basis of valuation for ad valorem tax purposes.

* * *

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The administrative judge finds that the letter prepared by Mr. Thompson cannot receive any weight whatsoever. The administrative judge finds Mr. Thompson was not present to testify or undergo cross-examination. Moreover, the letter is not even in the form of an affidavit. See Tenn. Code Ann. § 4-5-313.

The administrative judge finds that Mr. John's income approaches cannot provide a reliable basis of valuation absent additional proof. The administrative judge finds no evidence whatsoever was introduced to support the assumed base capitalization rate or vacancy and credit loss allowance. The administrative judge finds that no rent comparables were introduced to establish market rent or expenses for the "spec." portion of subject property which represents the bulk of the leaseable area according to Mr. John's analysis. The administrative judge finds that the only evidence introduced concerning market rent and

expenses for the Regions Bank portion of the property was a summary of the actual rents and expenses for Regions/AmSouth banks located in Columbia, LaFollette and Morristown.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$300,000 | \$2,700,000 | \$3,000,000 | \$1,200,000 |


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 1st day of May, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Michael John
Ralph Barnwell, Assessor of Property